THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NOS.22866, OF 2005

DISPOSED OF ON 24-01-2006

BETWEEN:

W.P.No.22866 of 2005

Government of Andhra Pradesh,

Rep. By its Secretary to Govt, School Education

Department, A.P. Hyderabad. .. petitioner

And

National Council for Teacher Education

New Delhi and others .. respondents

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WRIT PETITION NOS.22866 OF 2005

COMMON ORDER:

1. This Writ Petition has been filed by the Government of Andhra Pradesh represented by its Secretary to the Government, School Education Department, Hyderabad with a prayer to issue a Writ of Mandamus declaring the action of respondents in granting recognition to various colleges in Andhra Pradesh for starting D.Ed courses without No Objection Certificate as illegal and arbitrary.

2 . Dr.P.Krishnaiah, Secretary to Government, School Education Department has sworn to the writ affidavit. The case of the writ petitioner as set out in the writ affidavit, in brief, is:

The National Council for Teacher Education Act, 1993 (for short Act) was enacted with a view to achieve planned and coordinated development for teacher education system throughout the country. The functions of the National Council for Teacher Education (for short NCTE) are laid down in Sec.12 of the Act. The NCTE issued guidelines to State Government on 2.2.1996 for issuance of No Objection Certificate for establishing teacher-training institutions. No Objection Certificates are being issued by the respective State Government/Union Territory basing on the requirement of teachers in relation to enrolment projections of teachers at various stages, the attrition rate among the trained teachers due to superannuation, change of occupation, death etc. and the number of trained teachers on the live register of the employment exchanges seeking employment and possibility of their deployment. Under Section 2(16) of the Andhra Pradesh Education Act, “education” means general education, medical education, technical education, physical education, teacher education, special education, oriental education, adult education (including non-formal) and any other branch of education, which the Government may, by notification, specify under section 20(3)(a)(i) of the A.P. Education Act. Before permission is granted for establishment of educational institutions, the authority concerned must be satisfied that there is need for providing educational facilities to the people in the locality. The NCTE which has been insisting for No Objection

Certificate from the State government has dispensed with that requirement by amending NCTE (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course of training) (3rd amendment) Regulations, 2004 by notification dated 1.1.2004. Though there is an over all need for teachers in the country as a whole, as far as Andhra Pradesh is concerned, the existing number of teachers are more than sufficient to meet the educational requirements of the State. As per the norms existing in the State of Andhra Pradesh, the teacher pupil ratio is 1:40. However, in Government schools the actual teacher pupil ratio is 1:32. As per the statistics 2004-05 the teacher pupil ratio in the private institutions including unaided institutions is as follows:

Category	Number of teachers	No. of students	Ratio
Primary schools	47451	1682968	1:35.45
Upper PrimarySchools	45481	1099485	1:24.17
High Schools	63149	1609899	1:24.49
Overall ratio	1:28:14		

Thus in State of Andhra Pradesh there are more number of teachers than their requirement. The State Government appointed an expert committee to study the requirement of teachers and there upon the expert committee submitted a report indicating that the existing 33,000 qualified teachers are sufficient to meet the educational needs of the State Government upto the year 2013-14. Basing on the report of the expert committee, the Government of Andhra Pradesh has banned the establishment of fresh telugu medium B.Ed colleges and D.Ed. colleges vide G.O.Ms.No.49, School Education Department, dated 4.3.2005. The State Government has communicated the G.O. dated 4.3.2005 to the NCTE and brought to its notice that there is no need for establishment of any further teacher training institutions, by a letter No.2722/N2-1/2004, dated 16.3.2005. The NCTE, despite the ban imposed by the State Government in the establishment of teacher training institutes, is going on granting recognitions to every institution applying to run a teacher training course. As a result, many institutions offering B.Ed have applied to National Council to run D.Ed course without No Objection Certificate from the State

Government. The action of 1st respondent and 2nd respondent in granting recognition to varius existing B.Ed colleges to run D.Ed course without No Objection Certificate from the State Government is illegal and arbitrary.

3. Respondents 3 to 6 came on record as per order dated 18.11.2005 in W.P.M.P.No.30995 of 2005. R-7 came on record as per the orders dated 18.11.2005 passed in W.P.M.P.No.31380 of 2005. R-8 and R-9 came on record as per the orders dated 15-12-2005 passed in W.P.M.P.No.33750 of 2005. R10 came on record as per orders dated 6.1.2006 passed in W.P.M.P.No.32598 of 2005.

4. R-1 and R-2 filed counter affidavit. Smt.N.S.Meera, Under Secretary, SRC, NCTE, Bangalore has sworn to the counter affidavit. The counter affidavit of respondents 1 and 2, in brief, is :

NCTE has been set up by Act 73 of 1993 with a view to achieve planned and coordinated development of the teacher education system through out the country. The Parliament enacted the said Act in exercise of its power under Entry 66 in List I of the VII Schedule to the Constitution of India and thus the NCTE Act has supremacy over any other legislation made by any state. Sec.32 of the Act empowers the NCTE to make regulations on various matters. After coming into force of the Act, every institution offering or intending to offer a course or training in teacher education is required to seek recognition from the Regional Committees of the NCTE. The Regional Committees are empowered under Sec.14 and 15 of the NCTE Act to grant recognition. In February, 96 the NCTE issued guidelines for issuance of No Objection Certificate by the State Governments/ U.T. Administrations to institutions seeking recognition from NCTE. Grant or refusal of NOC by the State government or Union Territory is not conclusive or binding and the views expressed by the State Government are to be considered by the Regional Committee while taking the decision on the application for grant of recognition. The Government of India launched 'Sarva Shiksha Abhiyan' to attain universalisation of primary education by 2007 and elementary education by 2010. Having noticed shortage of trained teachers, policy of establishing elementary teacher training institutions has been liberalized. NCTE decided to dispense with the requirement of NOC from the State/ Union Territory for a period of three years for those institutions already running

B.Ed programmes recognized by NCTE and such other institutions keen to start a course or pre-school teacher education/nursery teacher education. Accordingly, regulations were notified by notification-dated 1.1.2004 published in gazette of India Part III on 5.1.2004. The NCTE being a national apex body in the field of teacher education, it makes regulations covering all the States keeping in view the interest and cannot make the regulations in respect of state specific. The Regional Committees of NCTE are required to take into consideration the relevant provisions of the NCTE Act, and the Rules made there under and the Regulations issued by the council on the grant of recognition to institutions. In January 2004 in view of the over all requirement of trained teachers in the context of 'Sarva Shiksha Abhiyan', the council decided to dispense with the requirement of NOC for a period of three years to facilitate the establishment of more institutions for elementary teacher education programme. As per 'Sarva Shiksha Abhiyan' launched by the Central Government, universalisation of primary education by 2007 and elementary education by 2010 is sought to be achieved. In order to achieve the said objective, more number of trained teachers are required through out the country and in any case, the NCTE is required to consider the matter of grant of recognition to institutions for starting/ conducting various teacher education courses under the provisions of NCTE Act, Rules and Regulations made there under.

5. The sum and substance of the counter affidavit of respondents 3 to 10 is that the entire field relating to the prescription of standards both infrastructural and instructional is regulated by the regulations framed by the NCTE and therefore the role of the respective State Governments in this regard has been drastically reduced. The NCTE Act being a parliamentary legislation, to the extent it occupies the field, will have primacy over any legislation made by local legislature of the State concerned. Therefore, the provisions of A.P. Education Act, 1982 with reference to the establishment, management and running of the Training Educational Institutions are to be subservient to the extent of NCTE Act, 1993 occupying the field. The Central Enactment i.e. NCTE Act, 1993, a complete Code in itself empowers the council to conduct survey of the need for those institutions and all other aspects for achieving coordinated development of teacher education in the country under Section 12 of the Act. The Council by virtue of its power to make regulations under section 32(1) of the Act, framed Regulations in the year 1995. Regulation 5(e) of the

said Regulations mandates that every application seeking recognition for establishment of institutions in teacher training is to be accompanied by a NOC from the State Government or the Union Territory concerned. The provisions of A.P. Education Act, 1982 (referably to Entry 25 of list III of the Seventh Schedule of the Constitution) to the extent of their overlapping in area in the matter of the grant of recognition for institutions imparting training in teacher education ought to yield to the provisions of NCTE Act, 1993. The only power of the State Government is to verify the need for establishment of teacher training institutions and issue NOCs to all those applicants who seek such NOCs. It is ultimately 2nd respondent which is empowered to take a decision to grant or not to grant recognition. Para 9 of the affidavit filed on behalf of 10th respondent-Holy Trinity Educational Society needs to be noted and it is thus:

" 9. I respectfully submit that in view of the regulations amended in the year 2004, the NCTE had issued a notification on 7.1.2004 calling for applications from the societies, which have already established B.Ed colleges for establishment of institutions to impart training in pre-school and elementary teacher education. The notification also stipulates that requirement of NOC from the State Government is dispensed with in accordance with its regulations for a period of three years therefrom. In pursuance of the same, the proposed 3rd respondent along with all other colleges have made applications for grant of recognition for institutions to impart training in D.Ed course which have been acted upon by the 2nd respondent council. The recognition granted to such new institutions to impart D.Ed programme is after conduct of inspection, verification of compliance with norms. The Council granted recognition to all the institutions subject to such institutions satisfying the Director, SCERT, hyderabad about the employment of a Principal and five faculty members in that D.Ed college. When an application has been made to the Director, SCERT, Hyderabad for seeking approval of the faculty by the newly recognized institutions, the same was rejected by the Director, SCERT, on the ground of policy of the State Government comprised in G.O.Ms.No.49, dated 4.3.2005. The Government also refused to grant permission to all these D.Ed institutions to commence admissions for the academic year 2005-2006. In such factual scenario, the institutions which had been granted recognition for D.Ed programme filed W.P.No.22255 of 2005 and batch before this Honourable Court challenging the above policy of the Government and the action of the Director, SCERT. In the said Writ Petitions, this Honourable Court directed the Government to approve the staff list submitted by the colleges therein without reference to G.O.Ms.No.49, dated 4.3.2005 and the said writ petitions are pending. In the mean time, the Government filed the present writ petition aggrieved by the action of the council in granting recognition without issuance of NOCs by the State Government."

All the impleaded respondents in one way or the other sailed with respondents 1 and 2.

6. Heard learned Government Pleader for School Education appearing for the petitioner, Sri.B.Adinarayana Rao, learned Standing Counsel for NCTE appearing for R1 and R2, Sri.N.Rammohan Rao, learned counsel appearing for respondents 3 to 6, Sri.V.Mallick, learned counsel appearing for R7 and Sri.C.V.R.Rudra Prasad, learned counsel appearing for R8 and 9 and Sri.S.Sri Ram, learned counsel appearing for R10.

7. Learned Government Pleader for School Education contends that Andhra Pradesh Education Act was enacted under Entry 25 of the Concurrent List, which gives power to the State Legislature to make laws regarding education including teacher education. Sec.20 of the Act does not in any way encroach upon the powers of the authorities constituted under NCTE Act, 1993. The State authorities alone can decide about the educational facilities and needs of the locality. If there are more teaching institutes in a particular area, there would be no justification in granting permission to one more institution in that locality. He would further contend that the State has the legislative competence to pass the legislation in respect of education including teacher education and Sec.20 of the act is intended for the general welfare of the citizens of the State and also in discharge of the constitutional duty enumerated under Article 41 of the Constitution. It is also submitted that State is in a better position to assess the need of a locality for establishing teacher training institutions and therefore dispensing with No Objection Certificate by the NCTE without the feed back by the State Government would create imbalance in establishing teacher education institutions in various parts of the State. To buttress his submissions, reliance has been placed on the following decisions:

1. ST.JOHNS TEACHERS TRAINING INSTITUTE V. REGIONAL DIRECTOR, NCTE

2. DILIP KUMAR GHOSH AND OTHERS V. CHAIRMAN AND OTHERS

3. GOVT. OF A.P. V. ST.MARYS EDUCATIONAL SOCIETY

4. GOVT. OF A.P. V. J.B.EDUCATIONAL SOCIETY

5. ASIF HAMEED V STATE OF JAMMU AND KASHMIR

6. NARENDRA PRASADJI V. STATE OF GUJARAT

7. UNION OF INDIA V. INTERNATIONAL TRADING CO.

8. BHARATHIDASAN UNIVERSITY V. ALL INDIA COUNCIL FOR TECHNICAL EDUCATION

9. R.KAMARAJU AND OTHERS. V. GOVT. OF A.P.

10. GOVT. OF A.P. V. MEDWIN EDUCATIONAL SOCIETY

8. Learned Standing Counsel appearing for R1 and R2 submits that dispensing with NOC is only a temporary measure so as to be in tune with the policy of the Center and the same is with a view to attend universalisation of primary education by 2007 and universalisation of elementary education by 2010. He would further contend that NCTE Act was enacted with the object of regulating and coordinating the development of teacher education through out the country and also for establishing appropriate and uniform norms and standards of teacher education in India.

9. Learned counsel appearing for the R3 to 10 would contend that the requirement of NOC has been dispensed with by the Central Government by way of an amendment to NCTE (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new courses or training) (3rd amendment) Regulations, 2004 and since the filed has been occupied by the Parliament, A.P. Education Act being enacted by the State Legislature has to give way to the legislation made by the Parliament.

10. Sri.Nooty Rama Mohan Rao, learned counsel appearing for the respondents 3 to 6 submits that the National Council for Teacher Education came to be constituted in

terms of the National Council for Teacher Education Act, 1993 and the entire field relating to the prescription of standards both infrastructural and instructional are regulated by the regulations framed by the National Council for Teacher Education Act and thereafter the role of the respective State Governments in this regard has been drastically reduced. Sri.V.Mallik, learned counsel appearing for the 7th respondent submits that the decision reported in GOVT. OF A.P. V. J.B.EDUCATIONAL SOCIETY on which reliance has been placed by the petitioner has no application to the facts of the case on hand.

11. The A.P. Education Act is a consolidating and amending act made by the State Legislature with the object of reforming, organizing and developing educational system in the State and to provide for matters connected there with or incidentally thereto. This legislation has received the assent of the President. Under section 19 of A.P. Education Act, educational institutions are classified into three categories viz., State institutions, local authority institutions and private institutions and granting permission for the establishment of educational institutions is covered by Sec.20. This section was amended by Act. 27 of 1987 wherein it was provided that no educational institution shall be established except in accordance with the provisions of the Act. The State Government is authorized to appoint by notification a competent authority for such area as may be specified in the notification. Sub-Sec. (1) of Section 20 provides that the competent authority appointed by the State government shall from time to time conduct a survey for the purpose of identifying the educational needs of the locality under its jurisdiction and there after it shall issue notification through the local newspapers calling for the application from the educational agencies desirous of establishing educational institutions. Educational agency means any body of persons including that of religious or linguistic minority entrusted with the establishment and maintenance of a private educational institution of a minority educational institution, as the case may be. Any educational agency applying for such permission shall satisfy the concerned authority that there is need for providing educational facilities to the people in the locality. There are some other requirements mentioned in sub-Section (3) of Section 20 and those conditions have to be fulfilled by the educational agency for applying of permission for establishing an educational institution. Section 20 of the A.P. Education Act reads as follows:-

" PERMISSION FOR ESTABLISHMENT OF EDUCATIONAL INSTITUTIONS:

1. The competent authority shall, from time to time, conduct a survey as to identify the educational needs of the locality under its jurisdiction, and notify in the prescribed manner through local news papers calling for applications from the educational agencies desirous of establishing educational institutions.

2. In pursuance of the notification under sub-Section (1) any educational agency including local authority or registered body or persons intending to - (a) establish an institution imparting education; (b) open higher classes in an institution imparting primary education (c) upgrade any such institution into a high school; or (d) open new courses (Certificate, Diploma, Degree, Post-Graduate Degree Courses, etc.)

3. Any educational agency applying for permission under sub-Section (2) shall –

   a. before the permission is granted, satisfy the authority concerned, - (i) that there is need for providing educational facilities to the people in the locality; (ii) & (iii) that the institution is proposed to be located in sanitary and healthy surroundings; (b) enclose to the application, - (i) title deeds relating to the site for building, playground and garden proposed to be provided; (ii) plans approved by the local authority concerned which shall conform to the rules prescribed therefore; and (iii) documents evidencing availability of the finances needed for constructing the proposed buildings; and (c) within the period specified by the authority concerned in the order granting permission, - (i) appoint teaching staff qualified according to the rules made by the government in this behalf; (ii) satisfy the other requirements laid down by this Act and the rules and orders made thereunder failing which it shall be competent for the said authority to cancel the permission.

4) On and from the commencement of the Andhra Pradesh Education (Amendment) Act, 1987, no educational institution shall be established except in accordance with the provisions of this Act and any person who contravenes the provisions of this section or who after the permission granted to him under this section having been cancelled continues to run such institution shall be punished with simple imprisonment which shall not be less than six months but which may extend to three years and with fine which shall not be less than three thousand rupees but which may extend to fifty thousand rupees:

Provided further that the Court convicting a person under this section shall also order the closure of the institution with respect to which the offence is committed."

The source of legislation of the A.P. Act is traced to Entry 25 of the Concurrent List which is to the following effect:-

"EDUCATION, including technical education, medical education and universities, subject to the provisions of Entries 63. 64, 65 and 66 of List I; vocational and technical training of labour."

As could be seen from the provisions of Sec.20 of the Education Act, that section provides as to what matters have to be taken into consideration by the authority concerned while granting permission for establishing educational institution. Sub section (3) of Section 20 of the said Act inter alia provides that one of the matters to be taken into consideration by the authority concerned is that there is need for providing educational facilities to the people in the locality.

12. The NCTE came to be established under the Act NCTE, 1993. The State Government has been assigned an important role in the task of development and improvement of teacher education and also in the matter of granting of recognition and permission. The issue as to whether No Objection Certificate (for short NOC) from the State Government is essential to consider the application of the institution for establishing teacher-training course in came up for consideration before the Supreme Court in ST.JOHNS TEACHERS TRAINING INSTITUTE V. REGIONAL DIRECTOR, NCTE. In the cited decision, Regulation 5(e), (f) and 8 of NCTE (Application for Recognition, the Manner for Submission, Determination of Conditions for Recognition of Institutions and Permission to Start New Course or Training) Regulations, 1995 came to be questioned. Regulations 5(e) and (f) read as under:

" 5.(e) Every institution intending to offer a course or training in teacher education but was not functioning immediately before 17.8.1995, shall submit application for recognition with a no objection certificate from the State or Union Territory in which the institution is located.

(f) Application for permission to start new course or training and/or to increase intake by recognized institutions under Regulation 4 above shall be submitted to the Regional Committee concerned with no objection certificate from the State or Union Territory in which the institution is located."

The provision in the above noted regulation for submitting the application for recognition with an NOC from the State Government or the Union Territory in which the institution is located is challenged as ultra vires and invalid in the above referred decision. It was contended before the Supreme Court that the impugned regulations have the effect of concerring the power of consideration of the application for the grant of recognition under Sec.14 of the NCTE Act upon the State Government, as in the event of rejection of NOC, application is not even registered by the council. The said contention came to be negatived by the Supreme Court. Paras 21 and 22 of the judgment need to be noted and they are:

" 21. Learned counsel for the appellant has strongly urged that in some cases the State Government has sat over the matter for a very long period without taking any decision either to grant an NOC or declining to grant the same and on account of this inaction of the State Government the application moved by the institutions before the Regional Committee was not even registered for consideration and thereby the right of the appellants to establish an institution for teachers' training or starting a course in teacher education was completely defeated. There can be no manner of doubt that the State Government must take a decision on the application moved by an institution for grant of an NOC within a reasonable time. If the State Government does not take a decision within a reasonable time it will obviously defeat the right of an institution to have its application considered by the Regional Committee. It will therefore be proper that the Council frames appropriate regulations fixing the time limit within which a decision should be taken by the State Government on the application moved by an institution for grant of an NOC. In the present cases, we are of the opinion that till such regulations are made the decision should be taken by the State Governments within four months, failing which it shall be deemed that the NOC has been

granted.

22. For the reasons mentioned above, we are of the opinion that the impugned Regulations are perfectly valid and intra vires the Act. The appeals and writ petitions are consequently dismissed. It is however directed that the State Governments/ Union Territories shall pass final order on the applications which are pending before them for grant of an NOC within four months of the presentation of a certified copy of this order, failing which it will be deemed that an NOC has been granted."

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13. In the writ petition challenge has been made to the third amendment to Regulation 2004. The amendment made to the Regulations 2004 reads as follows:

" (i) In the NCTE (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 dated 13-11-2002 as amended by Regulation dated 6-6-2003, after Sub-clause (ix) of Para 6, the following sub-clauses shall be added:

x. The requirement of NOC shall not apply to institutions already recognized by NCTE for running a B.Ed course and seeking recognition to start a course or training in Elementary Teacher Education or from an existing elementary teacher education institution seeking permission to increase in intake in such a course for a period of three years from the date of notification of these regulations in the Official Gazette.

xi. The requirement of NOC shall not apply to institutions seeking recognition to start a course or training in Pre-School Teacher Education/ nursery Teacher education or from an existing institution seeking permission to increase in intake in such a course, for a period of three years from the date of notification of these regulations in the Official Gazette.

(ii) In accordance with the revised provisions relating to requirement of NOC prescribed at (i) above, the last date for submission of application prescribed in para 7 of NCTE (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 dated 13th November, 2002 shall be the 31st January, 2004 only for the academic session 2004-2005."

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For better understanding, Regulation 6 in toto is required to be noted and it is thus:

" 6. **Requirement of no objection certificate from the State Government/UT Administration**.-

i. Application from every institution seeking recognition to start a course or training in teacher education or from an existing institution seeking permission to start a new course or training and/or increase in intake shall be accompanied by a No-Objection Certificate (NOC) from the State or Union Territory in which the institution is located. Application without NOC/endorsement of the State Government/UT shall not be processed by the concerned Regional Committee of NCTE.

ii. Every State Government/UT Administration shall endeavour to dispose of the application of the institution seeking NOC for starting a course or training in teacher education or seeking permission to start a new course or training and/or increase in intake, as expeditiously as possible, and shall provide its NOC/endorsement within six months of the last date of receipt of application for grant of NOC fixed by the concerned State Government/UT.

iii. Every State Government/UT Administration while considering application for grant of No Objection Certificate shall take into account the guidelines for issue of No Objection Certificate issued by the NCTE from time to time.

iv. The NOC / endorsement of the State Government/UT Administration in regard to issue of No Objection Certificate (NOC) will be considered by the Regional Committee while taking a decision on the application for recognition. In the event of a State / UT Govt. forwarding applications of institutions without NOC/ endorsement and requesting for not granting recognition to institutions for conducting a particular teacher training programme, the State Representatives will be asked to justify the position with facts and figures before the Regional Committee concerned in support of the decision of the State/UT Govts. and only thereafter, the applications of the institutions of the State/ UT concerned shall be taken up for further processing by the Regional Committee concerned.

v. The State Government/UT Administration will indicate in the NOC the number of seats for which NOC is being granted within the ceiling of basic unit fixed by the NCTE for the concerned pre-service course on teacher education and without this information it will be presumed that the NOC is for the basic unit of the course.

vi. The NOC issued by the State Government / UT Administration will remain valid till such time the State Government/UT Administration withdraws/cancels it.

vii. The NOC will deemed to have lapsed if the institution fails to get recognition from NCTE for the course within three years from the

date of its issue.

viii. The requirement of NOC shall not apply to Government institutions and also to Central Universities/State Universities recognized by the University Grants Commission and Central/State Autonomous Bodies in the field of education fully funded by the Central/State Governments, for conducting teacher training programmes in their campuses.

ix. Requirement of NOC shall not apply to University Departments for taking up innovative teacher education programmes for a maximum intake of 50 (fifty only). The question as to whether a programme is innovative will be decided by the concerned Regional Committee.

x. The requirement of NOC shall not apply to institutions already recognized by NCTE for running a B.Ed course and seeking recognition to start a course or training in Elementary Teacher Education or from an existing elementary teacher education institution seeking permission to increase in intake in such a course for a period of three years from the date of notification of these regulations in the Official Gazette.

xi. The requirement of NOC shall not apply to institutions seeking recognition to start a course or training in Pre-School Teacher Education/Nursery Teacher Education or from an existing institution seeking permission to increase in intake in such a course, for a period of three years from the date of notification of these regulations in the Official Gazette."

Regulation 6(ii) of these Regulations provides that the endorsement of State Government/UT Administration in regard to issue of NOC will be considered by the Regional Committee while taking a decision on the application for recognition. This provision shows that even if the NOC is not granted by the State Government or Union Territory concerned and the same is refused, the entire matter will be examined by the Regional Committee while taking a decision on the application for recognition. Therefore, the grant or refusal of an NOC by the State Government or Union Territory is not conclusive or binding and the views expressed by the State Government will be considered by the Regional Committee while taking the decision on the application for grant of recognition. The role of the State government is certainly important for supplying the requisite data, which is essential for formation of opinion by the Regional Committee while taking a decision under sub-section (3) of Section 14 of the Act.

14. Section 12 of NCTE Act deals with functions of NCTE. Sec.14 of NCTE Act deals with the recognition of institutions offering course or training in teacher education. Under Sec.14 of the NCTE Act, every institution offering or intending to offer a course or training in teacher education on or after the establishment of the NCTE under Sec.3 (1) of NCTE Act may make an application for grant of recognition. The NCTE has framed regulations in purported exercise of power under Sec.32 of the NCTE Act and the regulations are known as the National Council for Teacher Education (application for recognition, the manner for submission, determination of conditions for regulation of institutions and permission to start new course or training) Regulations, 2002. The NCTE Act and the regulations framed there under do not deal with the establishment and permission to establish institutions offering or intending to offer a course or training in teacher education. The A.P.Education Act, 1982 deals with the permission to be obtained by an agency for establishing educational institution. Educational institutions in terms of the definition of "educational institution" as defined under Sec.2 (18) of the Education Act include institutions offering or intending to offer a course or training in teacher education also. As could be seen from the provisions of Sec.20 of the Education Act, that Section provides as to what matters have to be taken into consideration by the authority concerned while granting permission for establishing educational institutions. Sub section (3) of Section 20 of the said Act inter alia provides that one of the matters to be taken into consideration by the authority concerned is that there is need for providing educational facilities to the people in the locality. The scope of section 20 of A.P. Education Act, 1982 and Sec.14 (3) of NCTE Act fell for consideration in GOVT. OF A.P. V. ST.MARY'S EDUCATIONAL SOCIETY. Paragraph 15 of the judgment needs to be noted and it is as follows:

" 15. As could be seen from the provisions of Sec.20 of the Education Act that Section provides as to what matters have to be taken into consideration by the authority concerned while granting permission for establishing educational institutions. Sub section (3) of Section 20 of the said Act inter alia provides that one of the matters to be taken into consideration by the authority concerned is that there is need for providing educational facilities to the people in the locality. As per the judgment of this Court in GOVT. OF ANDHRA PRADESH V. J.E. EDUCATIONAL SOCIETY the word "locality" with grammatical variations, has to be assumed to be "District", according to which, the State Government has power to grant/refuse permission for

establishing educational institutions and it includes the revenue divisions. However, it is pertinent to notice that after 1.7.1995 that position is radically altered. Under the NCTE Act, grant recognition and the role of the State Government is minimized. In other words, the role of the State Government in the matter of establishing educational institutions offering a course or training in teacher education is now restricted to grant of No Objection Certificate."

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The directions given in the aforesaid Division Bench judgment are as follows:

i. The NCTE alone is entitled to assess the relative merits of the applicants for recognition and it is not permissible for the State Government to assess relative merits of the applicants for 'No Objection Certificate' at the stage of consideration of the applications for grant of No Objection Certificates. The State government is bound to grant No Objection Certificate to those applicants who fulfill the norms and conditions specified in G.O.Ms.No.398, Education dated 4.12.1997.

ii. The NCTE, Southern Regional committee, Bangalore, while granting recognition under Sec.14 (3)(a) of the NCTE Act, shall grant recognition only to such number of institutions which the State government of Andhra Pradesh has fixed.

iii. In the facts and circumstances of the case, the parties shall bear their own costs both in writ appeal and writ petition.

iv. The judgment and order of the learned Single Judge dt.17.4.2000 made in W.P.No.4548 of 2000 accordingly shall stand modified in the terms of the above directions and in all other respondents the order of the learned Single Judge shall remain unaltered."

It was held in the cited decision that it is the State Government, which is competent to assess the need for establishing educational institutions in a particular area by issuing NOC. The importance of granting NOC by the State Government has also came up for consideration before the Supreme Court in ST.JOHNS TEACHERS TRAINING INSTITUTE V. REGIONAL DIRECTOR, NCTE. In the cited decision, Regulation 5(e), (f) and 8 came to be challenged on the ground that they are ultra vires of the provisions of NCTE Act. While dispelling the contentions of the appellant/training institute, the Apex Court observed in para 17 as follows:

" 17. A perusal of the guidelines would show that while considering an application for grant of an NOC the State Government or the Union

Territory has to confine itself to the matters enumerated therein like assessed need for trained teachers, preference to such institutions which lay emphasis on preparation of teachers for subjects like Science, Mathematics, English etc. for which trained teachers are in short supply and institutions which propose to concern themselves with new and emerging specialities like computer education, use of electronic media etc. and also for specialty education for the disabled and vocational education etc. it also lays emphasis on establishment of institutions in tribal and hilly regions which find it difficult to get qualified and trained teachers and locations which have catchment area in terms of schools of different levels where student teachers can be exposed to demonstration lessons and can undertake practice teaching. Para 8 of the guidelines deals with financial resources, accommodation, library and other infrastructure of the institution, which is desirous of starting a course of training and teacher education. The guidelines clearly pertain to the matters enumerated in sub-section (30 of Section 14 of the Act which have to be taken into consideration by the Regional Committee while considering the application for granting recognition to an institution, which wants to start a course for training in teacher education. The guidelines have also direct nexus to the object of the Act, namely, planned and coordinated development of teacher education system and proper maintenance of norms and standards. It cannot, therefore, be urged that the power conferred on the State Government or Union Territory, while considering an application for grant of an NOC, is an arbitrary or unchannelled power. The State Government or the Union Territory has to necessarily confine itself to the guidelines issued by the Council while considering the application for grant of an NOC. In case the State Government does not take into consideration the relevant factors enumerated in sub-section (3) of Section 14 of the Act and the guidelines issued by the Council or takes into consideration factors which are not relevant and rejects the application for grant of an NOC, it will be open to the institution concerned to challenge the same in accordance with law. But, that by itself, cannot be a ground to hold that the Regulations which require an NOC from the State Government or the Union Territory are ultra vires or invalid."

15. The legislative powers of the Parliament and the State Legislatures are governed by Article 245 to 255 of Part XI of the Constitution. Article 246 reads as follows:-

"SUBJECT-MATTER of laws made by Parliament and by the Legislature of States. (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated

> in List I in the Seventh Schedule (in this Constitution referred to as the "Union List"). (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List"). (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List"). (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included [in a State] notwithstanding that such matter is a matter enumerated in the State List."

The Parliament has exclusive power to legislate with respect to any of the matters enumerated in List I, notwithstanding anything contained in clauses (2) and (3) of Article 246. The non-obstante clause under Article 246(1) indicates the predominance or supremacy of the law made by the Union Legislature in the event of an overlap of the law made by Parliament with respect to a matter enumerated in List I and a law made by the State Legislature with respect to a matter enumerated in List II of the Seventh Schedule.

16. There is no doubt that both Parliament and the State legislature are supreme in their respective assigned fields. It is the duty of the Court to interpret the legislations made by the Parliament and the State Legislature in such a manner as to avoid any conflict. However, if the conflict is unavoidable, and the two enactments are irreconcilable, then by the force of the non-obstante clause in Clause (1) of Article 246, the Parliamentary legislation would prevail, notwithstanding the exclusive power of the State Legislature to make a law with respect to a matter enumerated in the State List.

17. With respect to matters enumerated in the List III (Concurrent List), both the Parliament and the State legislature have equal competence to legislate. Here again, the courts are charged with the duty of interpreting the enactments of Parliament and the State Legislature in such manner as to avoid a conflict. If the conflict becomes unavoidable, then Article 245 indicates the manner of resolution of such a conflict.

18. Thus, the question of repugnancy between the Parliamentary legislation and the State legislation can arise in two ways. First, where the legislations, though enacted with respect to matters in their allotted sphere, overlap and conflict. Second, where the two legislations are with respect to matters in Concurrent List and there is

a conflict. In both the situations, Parliamentary legislation will predominate, in the first, by virtue of the non-obstante clause in Article 246(1), in the second, by reason of Article 245(1). Clause (2) of Article 245 deals with a situation where the State legislation having been reserved and having obtained President's ascent prevails in that State; this again is subject to the proviso that the Parliament can again bring a legislation to override even such State legislation.

19. It is in this background that the provisions contained in the two legislative enactments have to be scrutinized. The provisions of the NCTE Act are intended to improve the teacher education and the various authorities under the Act have been given exclusive responsibility to coordinate and determine the standards of teacher education. It is a general power given to evaluate, harmonise and secure proper relationship to any project of national importance. Such a coordinate action in higher education with proper standard is of paramount importance to national progress. Section 20 of the AP Act does not in any way encroach upon the powers of the authorities under the Central Act. Section 20 says that the competent authority shall, from time to time, conduct a survey to identify the educational needs of the locality under its jurisdiction notified through the local newspapers calling for applications from the educational agencies. Section 20(3)(a)(i) says that before permission is granted, the authority concerned must be satisfied that there is need for providing educational facilities to the people in the locality. The State authorities alone can decide about the educational facilities and needs of the locality. If there are more colleges in a particular area, the State would not be justified in granting permission to one more college in that locality. Entry 25 of the Concurrent List gives power to the State Legislature to make laws regarding education, including technical education. Of course, this is subject to the provisions of Entry 63, 64, 65 and 66 of List I. Entry 66 of List I to which the legislative source is traced for the NCTE Act deals with the general power of the Parliament for coordination, determination of standards in institutions for higher education or research and scientific and technical educational institutions and Entry 65 deals with the union agencies and institutions for professional, vocational and technical training, including the training of police officers, etc.

20. The scope of NCTE Act and Regulations framed thereunder vis-à-vis the provisions of A.P. Education code fell for consideration in 12th cited decision supra. The findings recorded therein have been extracted in the afore said paragraphs. The

scope of Sec.20 of Education Act also fell for consideration in a batch of writ petitions in W.P.No.3179 of 2005 and W.A.No.425 of 2005 (SELF FINANCING RURAL ENGINEERING COLLEGE V. AICTE) wherein it has been held that the educational needs of a locality are to be assessed and determined by the State having regard to the Regulations framed under the Central Act.

21. There is no provision in NCTE Act enabling the Central Government to make any assessment about the need for providing a course or training in teacher education to the pupil in a locality. Sec.14 of NCTE Act enables the NCTE to grant recognition for teacher education, if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfills such other conditions required for proper functioning of the institution for all courses or training in teacher education as may be prescribed by the regulations framed under the NCTE Act. The regulations did not touch upon the aspect relating to assessment of educational needs in providing a course or training in teacher education in a locality as such. Therefore, it cannot be said that State Governments' jurisdiction to grant permission for establishing educational institutions including the institution offering or intending to offer a course or training in teacher education is affected in any way insofar as it relates to making of its assessment for providing such educational facilities to the people in a locality. However, the State Governments' role after the enactment of NCTE Act is only restricted to the aspect relating to the need for establishment of institutions offering or intending to offer a course or training in teacher education. In other words, the State government is still entitled to make an assessment about the need for establishment of such institution offering or intending to offer a course or training in teacher education.

22. In KUNJ BEHARI LAL BUTAIL V. STATE OF H.P. it has been held that delegated legislation must confirm to the provisions of the statute under which it is framed and that it must also come within the scope and purview of the rule making power of the authority framed the rules and in the event of either of these two conditions are not fulfilled, the rule so framed would be void.

23. The fact that the regulations may have the force of law or when made have to be laid down before the legislature concerned do not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make regulations are confined to certain limits and made to flow in a well defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the Courts are bound to ignore them when the question of their enforcement arise.

24. Introducing sub-clauses X and XI to Regulation 6 by way of third amendment to Regulations, 2004, tantamounts to keeping the State Government away in the process of establishing educational institutions offering a course or training in teacher education. Even the provisions of NCTE Act do not contemplate exclusion of the participation of the State Government in the process of consultation in the matter of establishing educational institutions offering a course or training in teacher education. Therefore, I find that sub-clauses X and XI of Regulation 6 travelled beyond the scope of NCTE Act and therefore they cannot be given effect and accordingly the Regional Committee of NCTE council has to necessarily instruct the applying institution for conducting teacher education to comply the requirement of No Objection Certificate from the State Government as contemplated under Regulation 6(1) of the Regulations, 2002.

22. In the result, this writ petition is allowed. No costs.

Dated: 24-01-2006. (B.Seshasayana Reddy,J)

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THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NOS.22866, OF 2005

DISPOSED OF ON 24-01-2006